

## Message Text

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PAGE 01 STATE 165882  
ORIGIN STR-04

INFO OCT-01 IO-13 ISO-00 FEA-01 AGRE-00 CEA-01 CIAE-00  
COME-00 DODE-00 EB-07 FRB-03 H-01 INR-07 INT-05  
L-03 LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05  
SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01  
/089 R

DRAFTED BY STR/MPOMERANZ:JEH  
APPROVED BY STR/MPOMERANZ/WBKELLY,JR  
OMB:LHAUGH  
LABOR:GWHITE/RSCHULMAN  
TREASURY:WBARREDA/JSCHOTT  
AGRIC:GWHITE/JBENSON  
EB/ITP/STA:JSPIRO  
EB/ITP/OT/STA:GWHITE  
COMMERCE:MPRUIETT/KKUWABARA  
DOD:JDARLING/RBOOTON  
-----081102 160123Z /65  
P 152252Z JUL 77  
FM SECSTATE WASHDC  
TO USMISSION GENEVA PRIORITY

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USMTN

E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: INSTRUCTIONS FOR PLURILATERAL MEETING ON GOVERNMENT PROCUREMENT (WEEK OF JULY 18)

REF: (A) MTN GENEVA 5290 (B) STATE 86798

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PAGE 02 STATE 165882

1. WE HAVE REVIEWED THE REVISED (JUNE 27) TEXT OF  
CANADIAN DRAFT AND FIND THAT THE SECTIONS ON NATIONAL  
TREATMENT/NON-DISCRIMINATION AND TECHNICAL SPECIFICATIONS  
ARE CONSISTENT WITH U.S. POSITIONS. THESE SECTIONS ARE  
ALSO CONSISTENT WITH OUR VIEW THAT, LIKE ALL OTHER PARTS  
OF THE CODE, THEY STAND INDEPENDENTLY OF ANY OTHER MTN  
COMMITMENTS. YOU MAY WISH TO COMPLIMENT THE CANADIANS FOR

HAVING REVISED THE EARLIER TEXT ON NATIONAL TREATMENT/ NON-DISCRIMINATION SO AS TO REMOVE THE REFERENCES TO GATT ARTICLES WHILE STILL MAINTAINING OUR COMMON NEGOTIATING OBJECTIVES.

2. OUR REVIEW OF THE NEW CANADIAN DRAFT HAS NOT BEEN LIMITED TO THE SUBJECTS TREATED IN PARA. 1. THE FOLLOWING COMMENTS ON THE OTHER PARTS OF THE DRAFT ARE PROVIDED TO ENABLE THE DEL TO DISCUSS THESE BILATERALLY WITH THE CANADIANS AND FOR PURPOSES OF FUTURE GUIDANCE:

A. SCOPE AND COVERAGE, PARA. (A) -- WE ARE PUZZLED AND CONCERNED BY THE BRACKETED LANGUAGE ON LINES 2 AND 3. IF EITHER CLAUSE IS EMPLOYED THE NET EFFECT WOULD BE TO REMOVE FROM CODE COVERAGE SUCH ENTITIES AS GOVERNMENT-OWNED AIRLINES, POWER GENERATING FACILITIES, AND POSTS AND TELEGRAPHS -- ALL IMPORTANT PROCUREMENT ENTITIES FOR US, BUT NONE OF WHICH ARE PURCHASERS FOR "GOVERNMENTAL PURPOSES" OR FOR "CONSUMPTION IN GOVERNMENTAL USE."

B. TENDERING PROCEDURES, PARA. 2(A) -- IN SOME INSTANCES IT IS POSSIBLE TO COMPLETE THE QUALIFICATION PROCESS WITHIN THE TIMEFRAME OF A PARTICULAR PROCUREMENT. HOWEVER, IN MANY MORE CASES SUCH A REQUIREMENT WOULD PLACE AN UNWARRANTED BURDEN ON A PROCUREMENT SYSTEM IF THEY COULD NOT COMPLETE THE PROCUREMENT PROCESS UNTIL ALL LIMITED OFFICIAL USE

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PAGE 03 STATE 165882

INTERESTED BIDDERS HAD TIME TO MEET THE QUALIFICATION REQUIREMENTS. THIS IS PARTICULARLY TRUE IN CASES INVOLVING HIGH TECHNOLOGY INDUSTRIES. WE WOULD SUGGEST A NORMATIVE RULE TO THE EFFECT THAT SUCH QUALIFICATION BE COMPLETED IN A REASONABLE TIME COMPATIBLE WITH THE EFFICIENT OPERATION OF THE PROCUREMENT PROCESS. PARA. 2(D) PROVIDES PROTECTION FOR SUPPLIERS WHO WISH TO QUALIFY FOR EVENTUAL CONTRACT BIDS.

C. TENDERING PROCEDURES, PARA. 2(C) -- ALLIED TO THE PROBLEM CONCERNING PARA. (A), WE NOTE THAT IN THIS PARA. THAT CANADIANS HAVE CHANGED TEXT TO ELIMINATE "SUBSTANTIAL" AS A MODIFIER OF "CONTROL." THIS MAY REFLECT CALCULATED EFFORT ON PART OF CANADIANS TO AVOID CONFRONTATION WITH OTHERS, SUCH AS EC, LEAVING TO ANNEX LIST COMPOSITION EFFORT THE PROBLEM OF RESOLVING COVERAGE OF THE CODE.

D. TENDERING PROCEDURES, PARA. 5 -- THE PRIOR PARA. 4 IS THE HEART OF EX-ANTE PUBLICITY. WE DO NOT UNDERSTAND THE VALUE OF PUBLICATION OF BIDDERS' LISTS AS A SUBSTITUTE FOR EX-ANTE PUBLICITY. FURTHERMORE, PAST THINKING HOLDS THAT ANNEX C WOULD LIST OFFICIAL GAZETTES OR SOME PUBLICA-

TION OF WIDE CIRCULATION, THE TYPE OF PUBLICATIONS WHICH DON'T LEND THEMSELVES TO PUBLICATION OF THE KIND OF EXTENSIVE DETAILED INFORMATION LIKE BIDDERS' LISTS.

E. TENDERING PROCEDURES, PARA. 10(D) -- THIS PARAGRAPH SHOULD BE LIMITED TO OPEN TENDERS. SELECTIVE TENDERING IS USED WHEN IT IS KNOWN IN ADVANCE THAT AWARD CANNOT LIKELY BE MADE ON THE BASIS OF PRICE ALONE. EVEN IN THE UNUSUAL CASE WHERE AWARD IS POSSIBLE ON PRICE ALONE, THIS IS NOT KNOWN UNTIL AFTER OPENING OF TENDERS AND EVALUATION OF TECHNICAL PROPOSALS. PUBLIC DISCLOSURE OF PRICES AT THE TIME OF TENDER OPENING WOULD UNDERMINE THE INTEGRITY OF THE NEGOTIATION PROCESS. IN ADDITION, PRICES OFFERED BY UNSUCCESSFUL TENDERERS ARE CONSIDERED BUSINESS CONFIDENTIAL OFFICIAL USE

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PAGE 04 STATE 165882

DENTIAL INFORMATION. ONLY THE WINNING PRICE IS PUBLISHED AFTER AN AWARD IS MADE IN SELECTIVE TENDERING. FOR THE ALLIED PROBLEM IN PARA. 10(G), AN AMENDMENT SHOULD BE MADE LIMITING THIS PROVISION TO SELECTIVE TENDERING. SUBSEQUENT NEGOTIATIONS WOULD NOT APPLY TO OPEN TENDERS.

F. TENDERING PROCEDURES, PARA. 11(A) -- WE WOULD CONSIDER IT ESSENTIAL THAT THE PROVISO CONTAINED IN THE PRIOR CANADIAN DRAFT BE PUT BACK IN -- "PROVIDED THAT HIGHLY SPECIALIZED TECHNICAL REQUIREMENTS MAKE IT IMPOSSIBLE TO RESORT TO OPEN OR SELECTIVE TENDERING PROCEDURES."

G. TENDERING PROCEDURES, PARA. 12 -- UNLESS ANNEX C IS CONCEIVED BY THE CANADIANS TO INCLUDE PUBLICATIONS OTHER THAN THOSE IN WHICH EX-ANTE AND EX-POSTE PUBLICITY ARE TO BE PUBLISHED, THIS WOULD BE AN UNWISE COURSE TO FOLLOW. CANADIANS SHOULD CONSIDER EARLIER PLAN TO HAVE SUCH MATERIALS SUPPLIED TO SIGNATORY STATES THROUGH THE SECRETARIAT ESTABLISHED FOR THE CODE. THIS WOULD BE IN ADDITION TO EACH GOVERNMENT UNDERTAKING TO PUBLISH IN ITS OWN GOVERNMENTAL PUBLICATIONS.

H. WITH REGARD TO SURVEILLANCE/DISPUTE SETTLEMENT PART AND OTHER PARTS OF CANADIAN DRAFT, WE NOTE ABSENCE OF PROVISION FOR SUPPLIER INQUIRY RIGHTS. THIS OF COURSE IMPACTS ON RESOLUTION OF DISPUTES BEFORE ESCALATION TO BILATERAL LEVEL.

3. DEL SHOULD BE GUIDED IN ALL OTHER RESPECTS BY EARLIER INSTRUCTIONS INCLUDING TPSC 77-20, 77-46, AND REF. (B).  
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## Message Attributes

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**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009